

**THE TESTIMONY OF GREG HALPERN,  
CEO OF CIRCLE GROUP INTERNET, INC., TO THE  
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS  
OF THE COMMITTEE ON FINANCIAL SERVICES  
OF THE U.S. HOUSE OF REPRESENTATIVES**

**June 26, 2001**

Madam Chairwoman:

Thank you for inviting me to this hearing. My name is Greg Halpern. I am founder and CEO of Circle Group Internet, a funding and consulting firm based in Mundelein, Illinois. I am representative of the 21 million small business professionals who create half of the jobs in America. They can't be here because today is a workday. If you run a small business, every day is a workday.

I have provided written testimony that addresses today's issues in detail. To summarize those remarks, small businesses like ours produce more than half of America's private gross domestic product. Between 1990 and 1995 we created 76 percent of new jobs. In 1998 alone, we created 31 million new jobs in nearly 900,000 new companies. Between now and 2005 we will create 60 percent of the new jobs in this country. These are figures provided by the United States government. This is not rhetoric. This is reality.

Small businesses struggle to succeed despite often unreasonable or misguided regulations, taxes and little representation. Among the greatest challenges we face are regulations that make the raising of capital difficult, if not impossible. Thousands of companies face these obstructions in their quest for capital to grow, benefit their investors and enrich the country. In an age of emerging technology and global competition, we need governmental systems that react swiftly and responsibly.

Today's hearings are chiefly concerned with the Securities and Exchange Commission. The Great Depression created a need for an agency like the S.E.C., and it has served its purpose. The better part of a century later, however, the S.E.C. has failed to keep pace as markets and the global economy have evolved. I'm not here to propose increased limitations of the S.E.C.'s power. I

ask that today we consider ways to help the S.E.C. continue in its mission, while simultaneously assisting small business.

Simply stated, the process to register with the SEC to raise capital is so time consuming, expensive and subjective that many small businesses either forego the process or drop out in the midst of it. Because so many of the original regulations that govern the process are antiquated, the S.E.C. regularly fails to comply with the Congressional order regarding the National Securities Markets Improvement Act of 1996 that it consider “competition, efficiency and capital formation” in its rulemaking activities.

Indeed, hundreds of companies retired from the S.E.C.’s registration process in 2000. The opportunities missed by these companies represented an immediate potential that can be measured in excess of 40 billion dollars – and far more in future years – that could have gone toward creating jobs, growing the economy and adding more tax dollars to the treasury. Was the next Home Depot, Dell or Yahoo among them? We’ll never know.

The process under which small businesses register their securities is Regulation SB. The SB stands for small business, and it is claimed to be a much simpler and friendlier method of entering the capital market based on objective criteria. But the reality of our experiences and those we’ve seen is that SB often predisposes the S.E.C. staff against the very companies it is supposed to serve.

Many small companies find themselves running a circular gauntlet through multiple departments within the S.E.C., which often mistakenly loses sight of its simple objective mission of ensuring full disclosure from registering companies and sending them off to market. Once the executives and board members of a company certify the truth and accuracy of their registration statement, they are supposed to be able to go effective within three to six months. Instead, many companies are drained needlessly of money, time and resources answering endless rounds of questions and waiting for the slow process to resolve itself.

Another issue that affects many small businesses is the Investment Act of 1940, which requires public companies to hold no more than 40 percent of their value in the securities of other companies. This becomes a significant hindrance to firms like ours, because as we fund other emerging companies, and their securities increase in value, we find ourselves out of compliance. In essence, we become victims of our own success.

But at the end of the day, this is not about minutia emerging from the 40 Act or Regulation SB; it is quite simply about the larger issue of the S.E.C.'s role in capital formation.

The S.E.C. was given clear direction in the last century to support capital formation, and it needs to learn how to work with small business in this new century. Our companies need relief now. The processes are in place. The S.E.C. just needs to let them work.

Additionally, I propose the creation and implementation of a department to the Securities and Exchange Commission to be known as the Small Business Advocacy and Liaison Office. This office should specifically serve small business ventures that require special assistance in reaching the capital markets. It would fall under the Division of Corporation Finance and represent the 19<sup>th</sup> office in the commission.

The office would advise small businesses how to meet the regulations and requirements of the S.E.C. in applying for access to the capital markets. It would function as ombudsman, monitor processing of applications and provide quick and reasonable responses to those involved in the registration process.

The office would establish a schedule that acts as a guideline to better prepare businesses for what to expect from their S.E.C. experience. The office should respond with clear and concise information regarding any difficulties or irregularities found in the process regarding its constituent applicant companies.

And finally, the Small Business Advocacy and Liaison Office would provide an annual review of the S.E.C.'s rules and regulations as they pertain to all small business entities. The office should make recommendations to Congress for changes or amendments in those rules and regulations that may unfairly encumber the process by which small businesses gain access to capital markets.

I thank you Madam Chairwoman and the rest of the Subcommittee for the opportunity to take a day off and come to Washington and speak of some of the concerns that 21 million of my fellow small business professionals have about their future. I know there is a genuine willingness on your part to help, and together we can solve these problems and get on with the task of building our businesses and the nation as well.

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**June 26, 2001**

Madam Chairwoman:

Thank you for inviting me to testify today. In a symbolic sense, I am representative of the 21 million small business professionals who create half of the jobs in America. They can't be here today. They can't be here because today is a workday for them. Yesterday was a workday for them, and tomorrow will be a workday, too. In fact, if you run a small business, every day is a workday.

Most small businesses professionals have neither the time nor the money to come to Washington and speak to Congress of the difficulties they face in the day-to-day pursuit of their business. I'm taking the day off to come here out of respect for these people and for your desire to help them.

I realize that a large part of the problem is of our own making, because we have not come forth to be heard the way big business or other interest groups do. Well, that is going to change, and today is the just the beginning of what I hope will be a meaningful exchange between the Congress and small business that can help all Americans.

The importance of small businesses in the history of this nation and in its future is indisputable. Today small businesses like ours produce 51 percent of America's private gross domestic product, and employ 53 percent of the workforce. Between 1990 and 1995 we created 76 percent of America's new jobs. In 1998 alone, we created 31 million new jobs in nearly 900,000 new companies. And this trend is expected to continue. Between now and 2005 small businesses will create 60 percent of the new jobs in this country.

These are not my figures. These are numbers provided by the United States government. This is not rhetoric. This is reality.

No one can seriously challenge the importance of small business in our economy, nor its dramatic role in making the U.S. the wealthiest nation in the history of the world.

But for all of these achievements, small business professionals struggle to succeed despite often unreasonable or misguided regulations, taxes and little representation. Among the greatest of governmental hindrances, are those regulations that make the raising of capital difficult, if not impossible, for many small companies.

No one knows the number of businesses that have failed, jobs that have been lost, taxes that went uncollected, and community wealth that never materialized because thousands of these companies faced impossible obstructions in their quest for capital.

In recent years, a changing business world and the emergence of companies that created a new kind of economy have compounded this problem. In many ways, these companies are unlike their predecessors, for they emerged in a global economy where communication is so fast that it has changed the way we all work and live.

We call these companies advanced small businesses, and while they share many of the same challenges as traditional small businesses, they differ in that:

- They often are the creators of new technology, new services, or other new concepts that create jobs and drive our economy.
- They have no specific organized representation in industry or government today.
- They have greater and more complex capital needs.
- They face unique challenges in their staffing and support services, based on their rapid growth curve.

Many of you may remember media reports of a decade or so ago that America was falling behind. New methods and systems developed in countries like Japan and Germany were going to make American business take a back seat in the world's economy.

What happened to all that dark speculation of the American dream turning into a nightmare?

I will tell you. The emergence of advanced small businesses, with their emphasis on new technologies and services and their abilities to create thousands of jobs, put an end to the doomspeak. Rather than falling behind, these businesses helped propel America to a place in the economic stratosphere that has never before been attained by any nation.

This is a self-evident truth.

What is not self-evident, is the fact that advanced small businesses and other similar enterprises, driven by the need for capital and the ability to react to sudden changes caused by global competition, find themselves hindered by the very nation that they have done so much to enrich. These businesses need governmental systems that can react with the same swiftness that is driving everything around us. They need this in order to survive, compete and prosper in a world that is intent on creating and catching our good fortune.

Today's hearings are chiefly concerned with the Securities and Exchange Commission, an agency that was borne of another time and whose mission is to protect investors and maintain the integrity of the securities markets.

The Great Depression, which took place 72 years ago this October, created a need for an agency like the S.E.C., and in that time it has served its purpose. In fact, it is amazing that the basic legislation based on an experience so long ago has been able to survive the generations virtually intact.

And therein lies the problem.

Because so many of the original regulations that govern the process are antiquated, the process to register with the SEC to raise capital is so time consuming, expensive and subjective that many small businesses either forego the process or drop out in the midst of it. Because of these outdated regulations, the S.E.C. regularly fails to comply with Congressional order regarding the

mandate of the National Securities Markets Improvement Act of 1996 that it consider “competition, efficiency and capital formation” in its rulemaking activities.

The process under which small businesses register their securities is Regulation SB. The SB stands for small business, and it is claimed to be a much simpler and friendlier method of entering the capital market based on objective criteria. But the reality of our experiences and those we’ve seen is that SB often predisposes the S.E.C. staff against the very companies it is supposed to serve.

Many small companies find themselves running a circular gauntlet through multiple departments within the S.E.C., which often mistakenly loses sight of its simple objective mission of ensuring full disclosure from registering companies and sending them off to market. Once the executives and board members of a company certify the truth and accuracy of their registration statement, they are supposed to be able to go effective within three to six months. Instead, many companies are drained needlessly of money, time and resources answering endless rounds of questions and waiting for the slow process to resolve itself.

Another issue that affects many small businesses is the Investment Act of 1940, which requires public companies to hold no more than 40 percent of their value in the securities of other companies. This becomes a significant hindrance to firms like ours, because as we fund other emerging companies, and their securities increase in value, we find ourselves out of compliance. In essence, we become victims of our own success.

Advanced small businesses often are required repeatedly to answer literally hundreds of questions — many of which are subjective or judgmental. These questions deal not just with normal and appropriate full disclosure, but with business models, management structures, investors, and even the professionals they’ve hired. Along the way, applicants often are compelled to change the way they do business just to satisfy the process.

What struck me most in our case — beyond the time and cost involved — was that those sitting in judgment often seemed to have little or no understanding of business. They would routinely fail even to respond to inquiries.

Many months later, after we reluctantly gave official notice that we were dropping out of the registration process, S.E.C. staff members continued to contact our office, stating that they still did not understand the nature of our business. We concluded that Circle Group, an advanced small business, did not fit into any of the existing S.E.C. business profiles — and if they couldn't understand us, how could they approve us?

For the record, Circle Group Internet is based in Mundelein, Illinois. We offer funding and business consulting services to emerging technology companies and other advanced small businesses. In 1998, we were the first company to complete an entire end-to-end stock offering over the Internet.

I want to be clear here. I don't believe the S.E.C. or its staff members intend to harm small businesses. I'm sure that they are good people doing the best they can, given the rules they have in place today. But so much has changed in the world since the agency was created, and the S.E.C.'s policies and procedures simply have not kept pace.

When you consider the S.E.C.'s mission, it is understandable why it has not naturally evolved to match changes in business and the economy. If we understand the S.E.C.'s role today, it is a law enforcement agency tasked with protecting individual investors. By the nature of that charter, it is easy to see how its goals would run counter to those of businesses built on emerging markets and accelerated business plans.

Companies like ours break the mold. These businesses are characterized by courage, passion and a profound work ethic. Many will become our nation's leading business — witness companies like Dell, Yahoo and Home Depot, to name a few. None of these companies are necessarily conventional, because they exist to do a new kind of business in a different world.

Circle Group was not alone in walking away from the capital market. Indeed, hundreds of companies retired from the S.E.C.'s registration process in 2000. The opportunities missed by just these companies represented an immediate potential that can be measured in excess of 40 billion dollars — and far more in future years — that could have gone toward creating jobs, growing the economy and adding more tax dollars to the treasury. Was the next Home Depot, Dell or Yahoo among them? We'll never know.



One cannot begin to estimate the ultimate cost to this country of these missed opportunities — and one can only guess at how many thousands of other companies did not even bother to venture into this costly and unfriendly process.

At end of the day, this is not about minutia emerging from the 40 Act or Regulation SB; it is quite simply about the larger issue of the S.E.C.'s role in capital formation. The S.E.C. was given clear direction in the last century to support capital formation, and it needs to learn how to work with small business in this new century. Our companies need relief now. The processes are in place. The S.E.C. just needs to let them work.

I'm not here to propose limiting the S.E.C.'s power. I am here instead to work with you to help small businesses, but at the same time insure that the basic mission of the S.E.C. — that of protecting investors and insuring the integrity of the marketplace — remains unchallenged.

With this mind, I propose the creation of a department within the Securities and Exchange Commission to be known as the Small Business Advocacy and Liaison Office. This office, which would fall under the Division of Corporation Finance and represent the 19<sup>th</sup> office in the commission, should serve small business ventures that require special assistance in reaching the capital markets.

I envision the Small Business Advocacy and Liaison Office operating with the same spirit of assistance that exists in other government offices, such as the Small Business Administration, the National Aeronautics and Space Administration, and the Internal Revenue Service. These offices already support the development of our country's businesses, and the S.E.C. can as well

Small Business Advocacy and Liaison Office would advise small businesses how to meet S.E.C. regulations and requirements in applying for access to the capital markets. It should function as an ombudsman, in that it would monitor the processing of applications and provide quick and reasonable responses to the questions of companies involved in the certification process.

The office would establish a certification schedule that would better prepare businesses for the time and cost commitments related to their S.E.C. experience. Correspondingly, this schedule would help those within the S.E.C. track individual companies' certification efforts and see that they are advancing in a timely fashion. The office should respond with clear and concise information

regarding any difficulties or irregularities found in the processing of its constituents' applications.

This will help eliminate the seemingly subjective analysis that takes place among commission and create a clear and understandable path to success.

In addition, the Small Business Advocacy and Liaison Office would annually review the S.E.C.'s rules and regulations as they pertain to all small business entities – particularly those that fall under the category of advanced small business. Based on this review, The office should make recommendations to Congress for changes or amendments in those regulations that may unfairly encumber the certification of advanced small businesses. One such suggestion would be a "Plain English" standard that clarifies objections made in the way forms are filed.

I hope that additional hearings will be held to explore the idea of an advocacy and liaison office. I realize that the S.E.C. already has an entity that deals with small business policy, but I can assure the Subcommittee that hundreds companies in America report the entity seems to be missing in action. We are suggesting a more action oriented office – one that sees the business as its primary constituent – would help the commission adjust to this evolving scene.

I would appreciate the opportunity to return to Washington for such a hearing with more detailed suggestions. It is important for many, many small business people to come to Washington and share their experiences for there are many issues of inequality that they face. Health insurance, benefits, taxes and thousands of other governmental regulations all impact small business.

More and more of us are recognizing that we as small business professionals have not done enough to be heard in Washington. Just as we are asking you to take action in government, we need to take action around the nation. That is why today I'm initiating the establishment of the Advanced Small Business Alliance; an organization dedicated to the support of all American small businesses, and specifically advanced small businesses.

ASBA will cooperate with local and federal governments whose policies affect the small business. The ASBA will be a positive force, aiding all organizations that share its desire to advance the conditions for small business in America.

Recognizing that many organizations exist to support the small business entrepreneur, we will work in harmony with groups to create a better environment to grow small businesses, thus continuing the nation's unprecedented growth and prosperity.

I pledge to see that the ASBA comes together quickly to work with this Subcommittee, House Small Business Committee and others in assessing the entire range of issues that face small business.

I thank you Madam Chairwoman and the rest of the Subcommittee for the opportunity to take a day off and come to Washington and speak of some of the concerns that 21 million of my fellow small business professionals have about their future. I know there is a genuine willingness on your part to help, and together we can solve these problems and get on with the task of building our businesses and the nation as well.

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